Supreme Court, U. S.
FILED
FEB 26 1980
MICHAEL RODAK, JR., CLERK

No. 79-1322

In the
Supreme Court of the United States
OCTOBER TERM, 1979

BETTY ISON,

Petitioner,

vs.

THE FIRST STATE BANK OF CENTRALIA, CENTRALIA, ILLINOIS, ET AL,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT, FIFTH DISTRICT, MOUNT VERNON, ILLINOIS

ANDREW J. LEAHY
MARY LEE LEAHY
919 South Pasfield
Springfield, Illinois 62704
(217) 522-4411
Attorneys for Petitioner

The Scheffer Press, Inc.—(312) 263-6850

INDEX

PAGE

Introduction 1

Opinions Below 1

Jurisdiction 2

Question Presented 2

Statement of the Case 3

Reasons for Granting Writ

I. A Requirement by A Bank That A Wife Sign Her Husband's Business Loans Because She Is A Wife is Discriminatory 5

II. Judicial Enforcement of Discrimination Violates the Fourteenth Amendment To the Constitution 11

III. The Practice of Requiring Wives to Co-Sign Notes With Their Husbands Is a Substantial Matter Warranting Review By This Court 11

Conclusion 14

Appendix

A. Order of Appellate Court in This Case 1a

B. Opinion of Appellate Court in Related Case .. 3a

INDEX TO CITATIONS

CASES

Abood v. *Detroit Board of Education,* 431 U.S. 209, 97 S.Ct. 1782 (1977) 11

Califano v. *Westcott,* ..... U.S. ....., 99 S.Ct. 2655 (1979) 5

Flagg Bros., Inc. v. *Brooks,* 432 U.S. 149, 98 S.Ct. 1729 (1978) 11

PAGE

Frontiero v. *Richardson,* 411 U.S. 677, 93 S.Ct. 1764 (1973) 5

Loving v. *Commonwealth of Virginia,* 388 U.S. 1, 87 S.Ct. 1817 (1967) 8

Meier v. *Evansville-Vanderburgh School Corp.,* 416 F.Supp. 748 (S.D. Ind., 1975), aff'd 539 F.2d 731 (7th Cir., 1976) 9

Orr v. *Orr,* 420 U.S. 268, 99 S.Ct. 1102 (1979) 5, 9

Reed v. *Reed,* 404 U.S. 71, 92 S.Ct. 251 (1971) 5

Shelley v. *Kraemer,* 334 U.S. 1, 68 S.Ct. 836, (1948) .. 11

Sprogis v. *United Air Lines, Inc.,* 444 F.2d 1194 (7th Cir., 1971) 10

Taylor v. *Louisiana,* 419 U.S. 522, 95 S.Ct. 692 (1975) 5

Yuhas v. *Libby-Owens-Ford Company,* 562 F.2d 496 (7th Cir., 1977) 10

CONSTITUTIONAL PROVISIONS

Fourteenth Amendment to United States Constitution 2

STATUTES AND REGULATIONS

15 *U.S.C.* 1691 .....10, 12

28 *U.S.C.* 1257(3) 3

12 *C.F.R.* 202 10

TREATISES
ARTICLES AND REPORTS

Commission on the Status of Women, State of Illinois Report and Recommendations to the Governor and the General Assembly, February, 1976 12

National Commission on Consumer Finance, Consumer Credit in the United States, 1972 11

13 *American Jurisprudence* 884 (Sec. 908) 6

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

No.

BETTY ISON,

Petitioner,

vs.

THE FIRST STATE BANK OF CENTRALIA, CENTRALIA, ILLINOIS, ET AL,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT, FIFTH DISTRICT, MOUNT VERNON, ILLINOIS

Petitioner, Betty Ison, respectfully requests that a writ of certiorari issue to review the judgment and order of the Illinois Appellate Court for the Fifth District, Mount Vernon, Illinois, entered on August 13, 1979.

OPINIONS BELOW

The Appellate Court did not publish its opinion. The case is noted at 395 N.E.2d 1249, 32 Ill. Dec. 868. The Appellate Court order is set out as Appendix A.

A subsequent opinion by the same Court involving the petitioner and a different lending institution is set out as Appendix B.

JURISDICTION

Petitioner was sued in the Circuit Court of Marion County, Illinois, by Respondent bank for recovery on a note. Petitioner defended on the grounds that she had been required to sign the note because she was the wife of the owner of the corporation which received the proceeds.

She contended that the requirement that a wife sign her husband's business loans is discriminatory in violation of the Fourteenth Amendment to the United States Constitution.

The trial court rejected her contention.

The Appellate Court affirmed on August 13, 1979, and denied a petition for rehearing on September 17, 1979.

The Supreme Court of Illinois denied a Petition for Leave to Appeal on November 29, 1979.

This Court's jurisdiction is invoked pursuant to 28 *U.S.C.* 1257 (3).

QUESTION PRESENTED

1. Is the requirement that a wife sign her husband's business loan discriminatory in violation of the Equal Protection clause of the Fourteenth Amendment to the United States Constitution?

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On April 15, 1977, the First State Bank of Centralia, Illinois, loaned $60,000.00 to Troy C. Ison, Inc. The primary security for the loan was service station property owned by the corporation.

The corporation was solely owned by Troy Ison and had assets in excess of two million dollars. Troy Ison was the president of the corporation. Carl Ison, the father of Troy, was vice-president of the corporation. Betty Ison, Troy's wife, was secretary of the corporation.

Troy and Betty signed the loan in their officer capacities in behalf of the corporation. The bank also required each to sign individually. The bank subsequently explaining through its president:

> "The execution of the mortgage note by Troy C. Ison and Betty Ison, as individuals, was required as one of the loan conditions because of their relationship both to Troy C. Ison, Inc., and to each other."

At the time of the loan to the corporation no inquiry was made or volunteered regarding Betty's financial circumstances.

The bank did not require the third officer, Troy's father Carl, to sign. The proceeds of the loan went directly to the corporation. Betty Ison did not receive any of the proceeds.

Later in the year, Mr. and Mrs. Ison became engaged in marital litigation resulting in their divorce. Contemporaneous with that litigation, Troy Ison and Troy C. Ison Inc. filed for bankruptcy and were each adjudicated bankrupts. Betty Ison has not filed for bankruptcy.

The instant case entered litigation when the bank sought recovery on the note and foreclosure of the mortgage.

Betty Ison defended in the trial court on the grounds that the bank required her to sign because she was the wife of Troy Ison and that this was discriminatory in violation of the Fourteenth Amendment to the United States Constitution and Article I, Sections 2, 17 and 18 of the Illinois Constitution and public policy.

The Court rejected her position and entered a $27,000.00 deficiency judgment against her.

She appealed to the Appellate Court making the same contention. The Appellate Court noted her position:

> "Betty Ison defended in the trial on the grounds that she was required to sign the note because she was the wife of Troy Ison, in violation of the Fourteenth Amendment to the United States Constitution and Article I, Sections 2, 17 and 18, of the Illinois Constitution and public policy."

The Court held that this did not present a substantial question and affirmed. The Appellate Court denied rehearing.

The Illinois Supreme Court denied her petition for leave to appeal.

REASONS FOR GRANTING THE WRIT

I.

A REQUIREMENT BY A BANK THAT A WIFE SIGN HER HUSBAND'S BUSINESS LOANS BECAUSE SHE IS A WIFE IS DISCRIMINATORY.

The instant bank's requirement that a wife sign her husband's business loans is an extension of 19th Century stereotyping described in *Frontiero* v. *Richardson,* 411 U.S. 677, 686, 93 S.Ct. 1764, 1769 (1973):

> "Neither slaves nor women could hold office, serve on juries, or bring suit in their own names, and married women traditionally were denied the legal capacity to hold or convey property or to serve as legal guardians of their own children."

The underlying assumption made by the bank and approved without opinion by the Appellate Court is that a woman by becoming a wife necessarily gives up the right to be treated as a person separate from her husband in business matters.

This Court has rejected such stereotyping in numerous cases. *Reed* v. *Reed,* 404 U.S. 71, 92 S.Ct. 251 (1971); *Frontiero* v. *Richardson,* 411 U.S. 677, 93 S.Ct. 1764 (1973); *Taylor* v. *Louisiana,* 419 U.S. 522, 95 S.Ct. 692 (1975); *Orr* v. *Orr,* 420 U.S. 268, 99 S.Ct. 1102 (1979) and *Califano* v. *Wescott,* ..... U.S. ....., 99 S.Ct. 2655 (1979).

We suggest that the instant practice serves no valid purpose, but is "part of the 'baggage of sexual stereotypes.'" *Califano* v. *Westcott,* ..... U.S. ..... at ....., 99 S.Ct. 2655 at 2663 citing *Orr* v. *Orr.*

The facts in this case are clear. Troy Ison, petitioner's husband, was the owner of all shares of stock in a corporation bearing his name. The corporation had assets in excess of $2,000,000. Troy was president of the corporation, his father Carl was vice-president, and the petitioner, Troy's wife Betty, was secretary.

The loan was made by the bank to the corporation with a mortgage on a service station owned by the corporation. The proceeds of the loan went to the corporation. Petitioner received none. The only relationship she had with the corporation was that of secretary, a position which is universally recognized as ministerial. 13 *Am. Jur.* 884 (Sec. 908).

The bank's president in a sworn statement said:

> "The execution of the mortgage note by Troy C. Ison and Betty Ison, as individuals, was required as one of the loan conditions because of their relationship both to Troy C. Ison, Inc., and to each other."

The bank showed no interest in Petitioner's financial condition and made no inquiry about her assets and liabilities. Likewise, the bank apparently saw no significance in Troy's father being the vice-president and made no demand upon him.

At oral argument in the Appellate Court the bank effectively conceded that the "secretary" relationship was inconsequential and that Petitioner had to sign because she was a wife.

Although the Appellate Court in this case refused to reveal its reasoning it did subsequently present its rationale in a different case involving the same petitioner raising the same defense against a different lending institution. (Set out in Appendix B) The Court said:

Betty Ison defended in the trial court on the grounds that she was required to sign the note because she was the wife of Troy Ison, in violation of the Fourteenth Amendment to the United States Constitution and Article I, Sections 2, 17, and 18, of the Illinois Constitution of 1970 and public policy. The trial court rejected her position and allowed the foreclosure to go forward.

We affirm the trial court in its rejection of appellant's contention regarding a deprivation of her constitutional rights. The argument merits scant discussion, but we think it obvious that the requirement that appellant sign the note in question arose out of the implications that flow from the marital relationship of the appellant and her husband. Special and unique are the legal consequences that attend the husband-wife relationship. In practically every area of our laws the commonplace rules find some adjustment because of a marital relation. The rights and duties of spouses affect the laws of contracts, property, torts, evidence, inheritance, conveyancing and so on.

Thus, there is no misunderstanding as to the precise practice which is involved. The foregoing rationale makes it clear that the obligation to sign is predicated not upon any business considerations, but rather upon the fact of marriage.

In view of the numerous decisions by this Court it also is clear that requiring a wife to sign her husband's business loans is but an extension of the concept that women have no rights separate from their husbands. The same principle which prevented women from contracting without their husband's consent is here used in a corollary to make a wife responsible on a contract over which she has no control and from which she receives no direct benefit. Indeed, if the Appellate Court's reasoning and that

of the bank were carried to its logical conclusion, the wife having the duty to join in the obligation by reason of marriage, would not even have to sign to be held liable.

We suggest that the general statement by the Appellate Court and the assumption by the bank that a woman is duty bound by marriage to become obligated on her husband's business loans is false and to the extent it has any vitality does so only because it is based on stereotyped assumptions about the role of women which have been rejected by this Court.

Indeed, the practice goes further than demanding women remain at home, it imposes liability for matters that arise outside that sphere.

In any event we suggest that the practice is a reinforcement of sexual stereotyping of woman's role as subordinate to that of men.

As justification of the practice, the bank and the Appellate Court, in its subsequent decision, take the following position:

> "Neither the appellant nor the female gender are singled out in an improper classification. The same rules are applicable to males as to females. Were the appellant the moving party in the business transaction in question then without question the signature of her husband would be required with the same force as hers in the instance in this case."

We suggest that this approach is precisely the same rationale rejected in *Loving* v. *Commonwealth of Virginia,* 388 U.S. 1, 87 S.Ct. 1817 (1967).

In that case the state of Virginia argued in favor of a law which forbad interracial marriages. This Court noted the state's argument:

> Thus, the State contends that, because its miscegenation statutes punish equally both the white and the Negro participants in an interracial marriage, these statutes, despite their reliance on racial classifications do not constitute an invidious discrimination based upon race. 388 U.S. at 8, 87 S.Ct. at 1821.

This Court rejected the logic of this approach recognizing that the statute was a mere subterfuge for maintaining White Supremacy.

We suggest that the instant practice being nothing more than an extension of already rejected concepts as to the role of woman must likewise fall. The instant practice goes beyond the "risk" factor noted in *Orr* v. *Orr,* 420 U.S. 268, 99 S.Ct. 1102, 1113 (1979) and does reinforce "the stereotypes about the proper place of women."

To the extent that the equal treatment argument has any validity it necessarily falls because even if the treatment is purportedly equal among married persons, the instant practice necessarily imposes upon married persons a burden not imposed upon unmarried persons.

Recent Congressional enactments in the field of sex discrimination in both employment and consumer financing, while not necessarily expressing Constitutional principles, do help clarify the essentially discriminatory nature of the instant practice.

In *Meier* v. *Evansville-Vanderburg School Corp.,* 416 F. Supp. 748 (S.D. Ind., 1975), aff'd. 539 F.2d 713 (7th Cir., 1976), the district court was faced with the precise question of whether "marital status," was included within the definition of sex discrimination under 42 U.S.C. 2000. "Marital status" was not expressly used. The Court held:

> "Discrimination resulting from an individual's marital status violates the intent of Congress to do away with disparate employment practices among men and women and accordingly falls within the category of "sex" as set forth in Title VII."

In *Sprogis* v. *United Air Lines, Inc.*, 444 F.2d 1194 (7th Cir., 1971), the court held the use of a "no-marriage" rule to be includable within the concept of sex discrimination. Most recently *Yuhas* v. *Libbey-Owens-Ford Company*, 562 F.2d 496 (7th Cir., 1977) held a "no-spouse" rule to come within the definition of sex discrimination.

The federal consumer financing act (15 *U.S.C.* 1691) recognizes the fact that women have difficulty in obtaining credit in their own names. They often are not treated as individuals.

12 *C.F.R.* 202, 7d which implements 15 U.S.C. 1691 states:

> "Except as provided in this subsection, a creditor shall not require the signature of an applicant's spouse . . . . ."
>
> "The applicant's spouse may serve as an additional party, but a creditor shall not require that the spouse be the additional party."

Although the consumer financing act does not include "business loans" it does by its provisions for protection of creditors explode any idea that the instant bank "needed" the wife's signature. The bank could adequately protect itself by requiring waivers of interest by spouses.

The federal consumer statute does recognize and identify the requirement that spouses sign each other's obligations is discriminatory.

We suggest that the whole thrust of federal legislation and decisions by this Court run counter to the practice petitioner asks be reviewed.

II.

JUDICIAL ENFORCEMENT OF DISCRIMINATION VIOLATES THE FOURTEENTH AMENDMENT TO THE CONSTITUTION.

Although the instant discrimination involved a private agreement, Petitioner's Fourteenth Amendment rights came into play when the state's judicial system exerted its power.

This principle was enunciated in *Shelley* v. *Kraemer*, 334 U.S. 1, 68 S.Ct. 836 (1948) and has been reiterated in *Abood* v. *Detroit Board of Education*, 431 U.S. 209, 97 S.Ct. 1782 (1977) and in *Flagg Bros., Inc.* v. *Brooks*, 436 U.S. 149, 98 S.Ct. 1729 (1978).

This case does involve matters arising under the Fourteenth Amendment and is not insulated from judicial scrutiny.

III.

THE PRACTICE OF REQUIRING WIVES TO CO-SIGN NOTES WITH THEIR HUSBANDS IS A SUBSTANTIAL MATTER WARRANTING REVIEW BY THIS COURT.

Sex discrimination by lending institutions is widespread. In 1972, the National Commission on Consumer Finance, in its report *Consumer Credit in the United States*, pp. 152-153, found that married women were routinely treated as having no right to credit independent of their husbands.

The Illinois Commission on the Status of Women in its 1976 *Report and Recommendations to the Governor and the General Assembly,* p. 92, found that the condition in Illinois was essentially the same.

> Indeed, generally, a woman is regarded as something less than a first-class citizen once she attained to the status of being a male's wife. She is subsumed under and is bequeathed an ascribed status as a function of his standing, and is not herself seen to possess individual merit. Our own study looked into this issue to determine whether the Illinois situation mirrored the results obtained elsewhere. Regrettably, Illinois lenders display as little sympathy for the concept of woman as potential independent borrower as the rest of their industry compatriots.

The enactment of 15 *U.S.C.* 1691 by the Congress recognized the existence of discrimination and specifically outlawed the precise practices here complained of in the field of "consumer finance."

That act is aimed at such matters as credit cards and loans for automobiles. We would suggest that as between "consumer finance" and "business finance" there would appear to be a greater justification in the former area for lenders to make assumptions regarding marital status. But the law is clear that VISA or Master Charge cannot automatically make wives responsible on their husband's credit card purchases at the local department store or gas station.

We suggest that if the stereotyping of husband-wife roles has been expressly outlawed by statute in the area where it would have its strongest basis, then there is no rational basis in the business field where the justification for co-signing is based upon a stereotyping that assumes business is outside the wife's proper sphere.

The practice is also worthy of review because of its interference with the marital relationship. The common practice and the one used here is to simply tell the wife where to sign. She is placed in an untenable position—refusing to sign at the risk of disrupting the marriage relationship. This the bank knows and takes advantage of even though, as in this case, it really has no interest in what assets the wife has.

This last aspect should also allay any suspicions that in striking down the practice there would be significant adverse consequences to the lending industry.

We also suggest that the instant case presents a reasonably clear and uncluttered factual situation which will allow this Court to address the issue.

Finally we suggest that as invidious as the practice is, the opportunity to challenge it is severely limited. Those who have standing to sue are either intimidated from challenging because of the possible negative consequences or if after a divorce or bankruptcy has occurred they would have no more than a chance at a pyrrhic victory.

We suggest that the form of discrimination brought before this Court is a substantial matter worthy of this Court's review.

CONCLUSION

The requirement by a bank that a wife co-sgn her husband's business loans is discriminatory and under the Fourteenth Amendment should be denied judicial enforcement. A writ of certiorari should issue to review the order of the Illinois Appellate Court for the Fifth Judicial District, Mount Vernon, Illinois.

Respectfully submitted,

ANDREW J. LEAHY
MARY LEE LEAHY
919 South Pasfield
Springfield, Illinois 62704
(217) 522-4411
Counsel for Petitioner

APPENDIX A

Order of the Appellate Court of Illinois, Fifth District filed August 13, 1979

No. 79-22

THE FIRST STATE BANK OF CENTRALIA,
Plaintiff-Appellee,

v.

TROY C. ISON, INC., TROY C. ISON and DEW MORTGAGE COMPANY, INC.,
Defendants,

and

BETTY ISON,
Defendant-Appellant.

Appeal from the Circuit Court of Marion County.
Honorable Ronald A. Niemann, Judge Presiding.

G. J. MORAN, J.

ORDER

This is an appeal from a deficiency judgment entered against appellant.

The action is based on a $60,000 promissory note signed by Troy Ison, as president of Troy C. Ison, Inc., and individually, and by Betty Ison as secretary of Troy C. Ison, Inc., and individually.

The note was secured by a mortgage on service station property owned by the corporation.

Betty Ison defended in the trial court on the grounds that she was required to sign the note because she was the wife of Troy Ison, in violation of the fourteenth amendment to the United States Constitution and Article

I, sections 2, 17 and 18, of the Illinois Constitution and public policy.

The court rejected her position and entered a deficiency judgment against her.

In our opinion there is no substantial question presented for review in this cause and an opinion would have no precedential value. We therefore affirm the judgment of the circuit court of Marion County pursuant to our authority under Supreme Court Rule 23 (Ill. Rev. Stat. 1977, ch. 110A, par. 23).

Affirmed.

JONES, P.J., and KARNS, J., concur.

APPENDIX B

Opinion of the Appellate Court of Illinois, Fifth District filed January 24, 1980

No. 79-436

KING CITY FEDERAL SAVINGS AND LOAN ASSOCIATION,

Plaintiff-Appellee,

v.

TROY C. ISON, DEW MORTGAGE COMPANY, INC., SALEM NATIONAL BANK and UNKNOWN OWNERS,

Defendants,

and

BETTY ISON,

Defendant-Appellant.

Appeal from the Circuit Court of Jefferson County, Illinois.

Honorable Harry L. Ziegler, Judge Presiding.

MR. PRESIDING JUSTICE JONES delivered the opinion of the court:

This is an appeal from a judgment of foreclosure of a mortgage entered against appellant.

The action involves two mortgages, the first of which is a home mortgage securing a loan from King City Savings and Loan to the Isons. The second mortgage secured a loan of $600,000 made to Troy C. Ison, Inc. by Dew Mortgage Company. The balance on the second mortgage was $62,640.19.

Betty Ison defended in the trial court on the grounds that she was required to sign the note because she was the wife of Troy Ison, in violation of the fourteenth

amendment to the United States Constitution and Article I, sections 2, 17, and 18, of the Illinois Constitution of 1970 and public policy. The trial court rejected her position and allowed the foreclosure to go forward.

We affirm the trial court in its rejection of appellant's contention regarding a deprivation of her constitutional rights. The argument merits scant discussion, but we think it obvious that the requirement that appellant sign the note in question arose out of the implications that flow from the marital relationship of the appellant and her husband. Special and unique are the legal consequences that attend the husband-wife relationship. In practically every area of our laws the commonplace rules find some adjustment because of a marital relation. The rights and duties of spouses affect the laws of contracts, property, torts evidence, inheritance, conveyancing and so on.

Neither the appellant nor the female gender are singled out in an improper classification. The same rules are applicable to males as to females. Were the appellant the moving party in the business transaction in question then without question the signature of her husband would be required with the same force as hers in the instance in this case.

In view of the obvious unavailability of appellant's contention in this appeal, we have concluded that the judgment of the trial court was correct. However, we do not affirm since it appears that appellant has sought to appeal from a judgment of foreclosure of a mortgage and although it may be final as to the matters it adjudicates it is not appealable and this court does not have jurisdiction to consider the appeal. A judgment of foreclosure does not dispose of all the issues between the parties and it does not terminate the litigation. A judgment foreclosing a mortgage does not become final and appealable until the trial court enters subsequent order

approving the foreclosure sale and directing distribution. Thus, in the absence of a finding by the trial court pursuant to Supreme Court Rule 304(a) (Ill. Rev. Stat. 1977, ch. 110A, par. 304(a)) that there is no just reason for delaying enforcement or appeal the judgment of foreclosure is not appealable and this court is without jurisdiction. *Harlem Savings Association* v. *Lesniak* (1968), 91 Ill. App. 2d 194, 234 N.E.2d 160; *Calumet Federal Savings & Loan Association of Chicago* v. *Markman* (1964), 50 Ill. App. 2d 430, 200 N.E.2d 419.

A similar rule pertains in cases of partition where it is held that a judgment for partition is not appealable in the absence of the Supreme Court Rule 304(a) finding by the trial court. The judgment for partition determines fewer than all the rights and liabilities in issue since the matters of master's report, division or sale, approval thereof and for distribution remain. *Getzelman* v. *Koehler* (1958), 14 Ill. 2d 396, 152 N.E.2d 833; *Dixon* v. *Moller* (1975), 33 Ill. App. 3d 648, 342 N.E.2d 232; *Varney* v. *Yangas* (1974), 24 Ill. App. 3d 364, 321 N.E.2d 353.

The record in this case reveals that after the notice of appeal from the judgment of foreclosure was filed the plaintiff proceeded with the advertising, sale, report of sale and order approving report of sale and directing distribution. Ordinarily the filing of a notice of appeal serves to divest the trial of jurisdiction to enter any further orders of substance in the cause. (*Rickard* v. *Pozdal* (1975), 31 Ill. App. 3d 542, 334 N.E.2d 288; *Loehde* v. *Loyola University* (1973), 11 Ill. App. 3d 827, 297 N.E.2d 661.) However, the general rule does not pertain in this case where the defendant's notice of appeal was premature. The filing of a notice of appeal from an order or judgment which is not made appealable by the Supreme Court Rules governing appeals neither deprives the trial court of jurisdiction to proceed with

the case nor vests the appellate court with jurisdiction to consider it. *Wright* v. *Risser* (1941), 378 Ill. 72, 37 N.E.2d 778; *Myers* v. *Myers* (1977), 51 Ill. App. 3d 830, 366 N.E.2d 1114; *Loveless* v. *Loveless* (1972), 3 Ill. App. 3d 967, 279 N.E.2d 531; *Casey* v. *McGuire* (1944) (abstract), 321 Ill. App. 308, 52 N.E.2d 822; 4A C.J.S. Appeal & Error, sec. 606.

We have taken this case under advisement and dispensed with oral argument pursuant to Supreme Court Rule 352(a) (Ill. Rev. Stat. 1977, ch. 110A, par 352(a)).

Appeal dismissed.

KARNS and KASSERMAN, JJ., concur.

Supreme Court, U. S.
FILED
MAR 21 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1322

BETTY ISON,

Petitioner,

vs.

THE FIRST STATE BANK OF CENTRALIA, CENTRALIA, ILLINOIS, *et al,*

Respondents.

On Petition For Writ of Certiorari To The Illinois Appellate Court, Fifth District, Mt. Vernon, Illinois

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

JOHN PAGE WHAM
212 East Broadway
Centralia, Illinois 62801
(618)-532-5621
Attorney for Respondent

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

INDEX

	Page
Introduction	1
Statement	1
The Issue	2
Reasons For Not Granting Writ	
I. The Petitioner Has Not Been A Victim of Discrimination	3
II. The State Court Action Is Not Subject To Attack For Enforcement Of The Alleged Discrimination	4
III. A Lending Agency Requirement That Notes Be Co-Signed By Both The Borrower And His Or Her Spouse Is Not A Matter Warrantying Review By This Court	5
Conclusion	6

INDEX TO CITATIONS

Cases

Arlington Heights v. Metro Housing Authority 429 U.S. 252 (1977)	2
Flagg Brothers v. Brooks 436 U.S. 149, 98 S. Ct. 1729 (1978)	3,4
Moose Lodge v. Irvis 407 U.S. 163 (1972)	3
Reed v. Reed 404 U.S. 71, 92 S. Ct. 251 (1971)	3
Shelly v. Kraemer 334 U.S. 1, 68 S. Ct. 836 (1948)	3,4
Washington v. Davis 426 U.S. 229 (1975)	2

Texts

1 O'Neal, Close Corporations; Law and Practice Sec. 2.08 (1971) 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1322

BETTY ISON,

Petitioner,

vs.

THE FIRST STATE BANK OF CENTRALIA, CENTRALIA, ILLINOIS; *et al,*

Respondents.

On Petition For Writ of Certiorari To The Illinois Appellate Court, Fifth District, Mt. Vernon, Illinois

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

STATEMENT

An accurate statement of the material facts is as follows:

Troy C. Ison and Betty Ison were husband and wife. They were President and Secretary of Troy C. Ison, Inc., a family corporation. Pursuant to application, Respondent, The First State Bank of Centralia, Illinois, made a $60,000 loan to the corporation upon condition that repayment be secured by a First Mortgage on certain real estate and the personal guarantees of Mr. and Mrs. Ison.

Thereafter, the Isons were divorced, the corporation and Mr. Ison escaped their obligations through bankruptcies and a mortgage foreclosure has resulted in a $27,000 deficiency Judgment against Petitioner Betty Ison, which she seeks to avoid through charges of discrimination in violation of the Fourteenth Amendment to the United States Constitution.

THE ISSUE

Whether a bank requirement that a husband and wife "sign" their family corporation business loan is discriminatory in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

REASONS FOR NOT GRANTING THE WRIT

I.

The Petitioner Has Not Been A Victim Of Discrimination

The business loan of Troy C. Ison, Inc. was made upon certain conditions which were met voluntarily. Neither the Petitioner nor the husband were required to meet those conditions and the Respondent bank was not required to *otherwise* make the loan.

"The execution of the mortgage note by Troy C. Ison and Betty Ison, as individuals, was required as one of the loan conditions because of their relationship both to Troy C. Ison, Inc. and to each other".

It has been held that to assert discrimination against a private party one must establish a discriminatory intent. *Arlington Heights* v. *Metro Housing Authority* 429 U.S. 252 (1977); *Washington* v. *Davis* 426 U.S. 229 (1975).

Here, the bank's *sole* purpose was to adequately secure repayment of the loan which it apparently failed to do notwithstanding the individual signatures of Mr. and Mrs. Ison. There is no evidence of discriminatory intent.

Any inference that the Respondents bank always requires the joinder of spouses in a business loan to the other is simply contrary to fact. It is a matter of common knowledge that many "business loans" are amply secured and made without the joinder or signature of the particular spouse involved.

Furthermore, while the Federal Constitution prohibits discrimination on the basis of sex, *it does not* prohibit normal business practices which are not discriminatory. *Flagg Brothers* v. *Brooks* 436 U.S. 149, 98 S. Ct. 1729 (1978); *Moose Lodge* v. *Irvis* 407 U.S. 163 (1972); *Reed* v. *Reed* 404 U.S. 71, 92 S. Ct. 251 (1971); *Shelly* v. *Kraemer* 334 U.S. 1, 68 S. Ct. 836 (1948).

II

The State Court Action Is Not Subject To Attack For Enforcement Of The Alleged Discrimination

Petitioner claims that *Shelly* v. *Kraemer* 334 U.S. 1 (1948), stands for the proposition that any State Court action may be attacked when it is the tool of discrimination. This is clearly erroneous. For a State Court action to be subject to attack as enforcing a discriminatory contract, there must exist a nexus relating to the discrimination complaint to the Court action. In *Shelly* v. *Kraemer,* the action was judicial enforcement of restrictive covenants explicitly barring Negroes from owning certain real estate. Here the situation is much different. All that is asked is the enforcement of a deficiency Judgment rendered on a note which on its face is nondiscriminatory, it making no difference what the sex of the signer was in effecting its validity.

Another case which requires a greater showing of state action is *Moose Lodge* v. *Harris* 407 U.S. 163 (1972). There a Negro was denied service by a private club solely because of his race. In sueing for injunctive relief the Plaintiff contended that the extensive regulation of liquor licenses in Pennsylvania provided the requisite State action. In rejecting this argument the Court noted that the State must significantly involve itself with invidious discrimination. (407 U.S. 173). Accord, *Flagg Brothers* v. *Brooks* 436 U.S. 149, 98 S. Ct. 1729 (1978).

No such intimate involvement is present here. Judicial enforcement of a deficiency Judgment is sexually neutral. Therefore, relief under the Fourteenth Amendment must be denied, due to the lack of State action.

III.

A Lending Agency Requirement That Notes Be Co-Signed By Both The Borrower And His Or Her Spouse Is Not A Matter Warrantying Review By This Court

Petitioner concedes that business loans are uniformly excluded from State and Federal laws which prohibit discrimination in financing. Thus, from a statutory viewpoint, the conduct which is asserted as discriminatory is in fact permissible and therefore not discriminatory.

The reasons for this exception are fairly obvious. The differences between consumer and business loans are vast. Generally, consumer loans are for smaller amounts than business loans; the risks involved in granting business loans are not only greater in terms of the sums lent, but in the larger number of dangers involved. Businesses may and do fail for myriad reasons.

Commercial bank loans represent the single largest source of private small business financing. 1 O'Neal, Close Corporations; Law and Practice Section 2.08 (1971). The policy suggested by Petitioner would make voidable a large percentage of the loans currently held by banks. It is the common practice for banks to require family members to assume liability for business loans. This practice does not depend on the sex of the family members but is instead necessitated by the need for security for loans made to small businesses with relatively few assets in contrast to liabilities. To prohibit this sound business practice would result in an almost immediate disappearance of funds available for the financing of small family businesses. The ultimate rationale for this practice is the benefit conferred upon the family by the granting of the loans, thereby enabling this most valuable unit the means for prospering. It would be a fatal blow to small business financing to prohibit a lender from requiring a spouse's secondary liability, especially when that spouse is a corporate officer.

CONCLUSION

The Petition for Writ of Certiorari fails to demonstrate any valid reason as to why this case should be the subject of further review. We therefore suggest that said Petition for Writ of Certiorari should be denied.

Respectfully submitted,

JOHN PAGE WHAM
212 East Broadway
Centralia, Illinois 62801
Attorney for Respondent